

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

EX PARTE ROBBIN ET AL.

Application for Patent

Filed February 9, 2004

Serial No. 10/775,527

Group Art Unit 3695

Examiner: Pollock, Gregory A.

FOR:

**NETWORK-BASED PURCHASE AND DISTRIBUTION OF MEDIA IN
ACCORDANCE WITH PRIORITIES**

APPEAL BRIEF

TABLE OF CONTENTS

I. REAL PARTY IN INTEREST	1
II. RELATED APPEALS AND INTERFERENCES	1
III. STATUS OF THE CLAIMS.....	1
IV. STATUS OF AMENDMENTS.....	1
V. SUMMARY OF THE CLAIMED SUBJECT MATTER	2
VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL	5
VII. ARGUMENT	6
A. <u>CLAIMS 1-3, 5, 6, 9, 11-16, 19 and 23 ARE NOT OBVIOUS OVER SANTORO ET AL. IN VIEW OF HOMER ET AL.</u>	
B. <u>CLAIM 24 IS NOT OBVIOUS OVER SANTORO ET AL. IN VIEW OF HOMER ET AL. AND NIEH ET AL.</u>	
C. CONCLUSION	
VIII. CLAIMS APPENDIX	A-1
IX. EVIDENCE APPENDIX	A-6
X. RELATED PROCEEDINGS APPENDIX	A-7

TABLE OF AUTHORITIES

CASES:

<i>KSR Int’l Co. v. Teleflex Inc.</i> , 127 S. Ct. 1727, 82 USPQ2d 1385, 1397 (2007)	12, 25
--	--------

I. REAL PARTY IN INTEREST

The real party in interest is the assignee, Apple Inc.

II. RELATED APPEALS AND INTERFERENCES

It is believed that there are no other appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF THE CLAIMS

This application was filed February 2, 2009. After various amendments to the claims, claims 1-3, 5, 6, 9, 11-16, 19 and 22-24 were finally rejected on June 8, 2010. The final rejection of claims 1-3, 5, 6, 9, 11-16, 19 and 22-24 was appealed on September 7, 2010.

Claims 1-3, 5, 6, 9, 11-16, 19 and 22-24 are now pending on Appeal, and the status of each claim is as follows:

Claims 1-3, 5, 6, 9, 11-16, 19, 23 and 24 : Rejected

Claims 4, 7, 8, 10, 17, 18, 20-22 : Cancelled

IV. STATUS OF AMENDMENTS

All Amendments filed have been entered, including the Amendment filed September 7, 2010.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The invention relates to prioritizing use of resources (e.g., network resources) at a client machine (e.g., computer) so that user satisfaction is enhanced. The client machine typically executes a software program that permits a user of the client machine to browse, preview, purchase, or download media. The media can, for example, be audio, video, or image data. More particularly, in the case of a client machine that operates at least one application program that provides media-based actions, the invention manages the use of limited network resources (e.g., network connection bandwidth) at the client machine so that different media-based actions are performed at different priority levels. For example, at the client machine, a second type of media-based action can be issued while a first type of media-based action is being processed. When the second type of media-based action has a higher priority level than the first type of media-based action, then the processing of the first type of media-based action can be suspended so that processing of the second type of media-based action can be given preference. See, e.g., pages 4-13

Independent claim 1 provides a method of managing tasks performed within a single client media player application program stored on a computer readable medium and running at the application level on a computer coupled over a network to a network-based media server. See, e.g., Figures 1-7 and page 4, line 22 to page 13, line 22. The method recites: receiving, via a task manager computer program implemented within the single client media player application program, tasks to be performed from the single client media player application program, the tasks pertaining to one or more different media-based actions, and the tasks involving interaction of the client media player application program with the media server over the network [e.g., page 5, line 12 – page 6, line 12, and Figure 1, ref. 102; page 9, line 23 – page 11, line 7, and Figure 6, ref. 602-610]; activating, via the task manager computer program, an operation at the client media player application program in response to each of the tasks [e.g., page 5, line 12 – page 6, line 12, and Figure 1, ref. 104; page 9, line 23 – page 11, line 7, and Figure 6,

ref. 602]; and coordinating, via the task manager computer program, performance of the activated operations at the client media player application program in accordance with priority levels associated with the different media-based actions of the tasks, each of the different media-based actions having a different intra-application priority level, the priority levels of the different media-based actions being user-modifiable based on user interaction with the client media player application program [e.g., page 5, line 12 – page 6, line 12, and Figure 1, ref. 106; page 9, line 23 – page 11, line 7, and Fig. 6, ref. 602].

Independent claim 11 provides a computer readable medium including at least executable computer program code tangibly stored thereon. The computer program, when executed by a computer, performs a method of managing tasks performed within a single client media player application program running at the application level on the computer and being coupled over a network to a network-based media server. See, e.g., Figures 1-7 and page 4, line 22 to page 13, line 22. The method recites: receiving, via a task manager computer program implemented within the single client media player application program, tasks to be performed from the single client media player application program, the tasks pertain to one or more different media-based actions, and the tasks involving interaction of the client media player application program with the media server over the network [e.g., page 5, line 12 – page 6, line 12, and Figure 1, ref. 102; page 9, line 23 – page 11, line 7, and Figure 6, ref. 602-610]; activating, via the task manager computer program, an operation at the client media player application program in response to each of the tasks [e.g., page 5, line 12 – page 6, line 12, and Figure 1, ref. 104; page 9, line 23 – page 11, line 7, and Figure 6, ref. 602]; and coordinating, via the task manager computer program, performance of the tasks at the client media player application program in accordance with priority levels associated with the different media-based actions of the tasks, each of the different media-based actions having a different intra-application priority level, the priority levels of the different media-based actions being user-modifiable based on user interaction with the client media player application program [e.g., page 5, line 12 – page 6, line 12, and Figure 1, ref. 106; page 9, line 23 – page 11, line 7, and Figure 6, ref. 602].

Independent claim 23 provides a computer that presents media to a user. See, e.g., Figures 1-7 and page 4, line 22 to page 13, line 22. The computer recites: (i) a single client media application program stored on a computer readable medium and running at the application level on the computer that enables the user to play, browse, preview, purchase, download and present a plurality of media items [e.g., page 9, lines 11-22, and Figure 5, ref. 506; page 9, line 23 – page 11, line 7, and Figure 6, refs. 604-610; page 11, line 8 – page 12, line 27, and Figure 7, ref. 704]; (ii) a network interface coupled to the computer that permits said single client media application program to interact with a media commerce server that stores or manages the plurality of media items [e.g., page 9, lines 11-22, and Figure 5, ref. 502]; and (iii) a task manager computer program implemented within the single client media player application program that coordinates performance of at least browse, preview, purchase and download operations by assigning user-modifiable intra-application priority levels to each of the browse, preview, purchase and download operations, and coordinates performance of the browse, preview, purchase and download operations in accordance with the assigned user-modifiable intra-application priority levels based on user interaction with the client media application program [e.g., page 9, line 23 – page 11, line 7, and Figure 6, ref. 602; page 11, line 8 – page 12, line 27, and Figure 7, ref. 708].

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The issues presented on appeal are:

A. Whether claims 1-3, 5, 6, 9, 11-16, 19 and 23 are obvious over Santoro et al., US Patent Publication 20030020671 (hereafter “Santoro et al.”), in view of Homer et al., US Patent Publication 2002/0042730 A1 (hereafter “Homer et al.”).

B. Whether claim 24 is obvious over Santoro et al. in view of Nieh et al., “The Design, Implementation and Evaluation of SMART: A Scheduler for Multimedia Applications,” Proceedings of the Sixteenth ACM Symposium on Operating Systems Principles, October 1997 (hereafter “Nieh et al.”).

VII. ARGUMENT

A. CLAIMS 1-3, 5, 6, 9, 11-16, 19 and 23 ARE NOT OBVIOUS OVER SANTORO ET AL. IN VIEW OF HOMER ET AL.

Claim 1

Claim 1 pertains to a method of managing tasks performed within a single client media player application program. More particularly, claim 1 is as follows:

A method of managing tasks performed within a single client media player application program stored on a computer readable medium and running at the application level on a computer coupled over a network to a network-based media server, said method comprising:

receiving, via a task manager computer program implemented within the single client media player application program, tasks to be performed from the single client media player application program, the tasks pertaining to one or more different media-based actions, and the tasks involving interaction of the client media player application program with the media server over the network;

activating, via the task manager computer program, an operation at the client media player application program in response to each of the tasks; and

coordinating, via the task manager computer program, performance of the activated operations at the client media player application program in accordance with priority levels associated with the different media-based actions of the tasks, each of the different media-based actions having a different intra-application priority level, the priority levels of the different media-based actions being user-modifiable based on user interaction with the client media player application program.

1. **NONE OF THE CITED REFERENCES TEACH OR SUGGEST DIFFERENT INTRA-APPLICATION PRIORITY LEVELS FOR DIFFERENT MEDIA-BASED ACTIONS**

Among other things, claim 1 recites:

coordinating ... performance of the activated operations at the client media player application program in accordance with priority levels associated with the different media-based actions of the tasks, each of the different media-based actions having a different intra-application priority level....

As to such recited different intra-application priority levels, the Examiner relies on portions of Santoro et al. which concern priorities, i.e., refresh priorities, for tiles of a *graphical user interface* organized as a grid. See, e.g., Santoro et al., Fig. 2.

While Santoro et al. supports priorities for tiles in its grid, its priorities are amongst its tiles. For example, Fig. 12 of Santoro et al. illustrates a data structure 1200 of attributes of a grid object 700. The data structure 1200 include a tile list 1216 containing attributes of each tile. Santoro et al., para. [0104]. Additionally, it is stated:

In particular, the address of each tile, its priority and its refresh rate are stored by the grid program. The grid also stores other attributes of tiles such as their respective positions on the grid as given by their column and row number. The priority of a tile may be used to determine its refresh rate in one embodiment of the present invention.”

Santoro et al., para. [0104].

Hence, use of priorities for tiles in a grid as taught by Santoro et al. are to establish refresh rates for the information displayed in a corresponding tile. The grid manages the flow of information to the tiles (Santoro et al. para. [0100]) and the grid manages the refresh rate for each tile in the grid. (Santoro et al. para. [0101]).

In contrast, however, claim 1 pertains to intra-application priority levels for different media-based actions supported by a client media player application program. For example, the priorities for different media-based action can be used to prioritize execution of actions, whereby one execution thread might be suspended for another execution thread associated with a higher priority action.

Tiles of a grid for display as in Santoro et al. are in no way “different media-based actions supported by a client media player application program.” In addition, the determination of refresh rates for tiles of a grid [graphical user interface] based on priorities as taught in Santoro et al. cannot teach or suggest providing different intra-application priority levels for different media-based actions supported by a client media player application program.

Moreover, the rejection in the Office Action improperly equates the URL loader 1510 of Santoro et al. to the client media player application program recited in claim 1. However, the URL loader 1510 cannot correspond to the client media player application program of claim 1. According to para. [0119] of Santoro et al. the “URL loader 1510 decides whether content should be obtained afresh by contacting the connection manager 1512, or from content previously stored in cache.”

The Examiner argues, on page 10 of the final Office Action, that the URL loader 1510 is an application program since “[t]he URL loader is not part of the operating system....” This is not correct. The tiles in Santoro et al. are separate and distinct and not part of a common application program. Each tile is separate and assigned to “a data stream or application program.” (e.g., Santoro et al., para. [0088]). Further, para. [0089] of Santoro et al. states: “Each tile is separately associated with a series of information, for example, an application program, database or file....” Consequently, in contrast to claim 1, there is no reasonable basis to conclude that the URL loader 1510 is a client media player application program, let alone a client media player application program in which different intra-application priority levels are assigned to different media-based actions supported by such client media player application program. At best, Santoro et al. teaches that each tile of its grid [graphical user interface] is separate and pertains to a distinct data stream or application program. As such, any priorities to tiles would not be intra-application priorities for different media-based actions supported by a client media player application program as recited in claim 1.

As such, it is respectfully submitted that Santoro et al. not only fails to teach or suggest intra-application priorities for different media-based actions but also cannot possibly be combined with any other references to teach the invention recited in claim 1.

Homer et al. pertains to a rechargeable media distribution and play system. Homer et al. was combined with Santoro et al., on page 6 of the Office Action, only for teaching “media-based actions”. However, Homer et al. also fails to teach or suggest intra-application priorities for different media-based actions supported by a client media player application program. Hence, even if it were appropriate to combine Homer et al. with Santoro et al. as proposed in the final Office Action, the proposed combination of references does not cure the deficiencies of Santoro et al. noted above.

Accordingly, both Santoro et al. and Homer et al. fail to teach or suggest intra-application priorities for different media-based actions as recited in claim 1.

**2. NONE OF THE CITED REFERENCES TEACH OR SUGGEST
PRIORITY LEVELS FOR DIFFERENT MEDIA-BASED ACTIONS
THAT ARE USER-MODIFIABLE**

As noted above, claim 1 pertains to a method of managing tasks performed within a single client media player application program in which different media-based actions can have different intra-application priority levels. In addition, claim 1 also recites that “the priority levels of the different media-based actions being user-modifiable based on user interaction with the client media player application program.”

On page 6 of the final Office Action, the Examiner made reference to paragraphs [0064], [0089], [0101], [0112], [0166] of Santoro et al. However, these referenced paragraphs are, at best, concerned with refresh or retrieval rates for tiles of its displayed grid. As such, these refresh or retrieval rates in Santoro et al.

are not for “different media-based actions” that are assigned different priority levels based on user interaction with a client media player application program as recited in claim 1.

Hence, it is submitted that Santoro et al. clearly does not teach or suggest modifying priority levels for different media-based actions by user interaction with a client media player program. Instead, priorities for tiles in Santoro et al. are primarily set by the grid itself based on type of data or level in grid’s hierarchy. Formally, Santoro et al. expresses this in para. [0090] which states:

The grid assigns a priority to a tile based upon the identifier, or based upon the type of data that the source of the information comprises. Where tiles are ranked into levels, the grid assigns an information source to a tile in a level that is appropriate for the type of data or the identifier associated with the information source. In this way, a tile can be automatically given a priority that is appropriate for the type of information that it is to display.

Any mention of user preferences or user specified rates (i.e., retrieval rates, refresh rates) in Santoro et al., see Santoro et al. para. [0102], is not taught or suggested as being for different media-based actions of a client media player application program. Clearly, Santoro et al. is unable to teach or suggest user-modifiable priorities of different media-based actions of a client media player program as recited in claim 1. As such, any priorities to tiles in Santoro et al. would not teach or suggest that intra-application priorities for media-based action are user-modifiable as recited in claim 1.

Homer et al. pertains to a rechargeable media distribution and play system. Homer et al. was combined with Santoro et al., on page 6 of the Office Action, only for teaching “media-based actions”. However, Homer et al. also fails to teach or suggest user-modifiable priorities of different media-based actions of a client media player program as recited in claim 1. Hence, even if it were appropriate to combine Homer et al. with Santoro et al. as proposed in the final Office Action, the proposed combination of references does not cure the deficiencies of Santoro et al. as noted above.

Accordingly, both Santoro et al. and Homer et al. fail to teach or suggest user-modifiable priorities of different media-based actions of a client media player program as recited in claim 1.

3. EXAMINER’S RATIONALE TO COMBINE SANTORO ET AL. AND HOMER ET AL. IS DEFECTIVE

Homer et al. pertains to a rechargeable media distribution and play system. Homer et al. was combined with Santoro et al., on page 6 of the Office Action, only for teaching “media-based actions” because the Examiner admits that such is not taught by Santoro et al. Further, the rationale provide to combine these reference in the final Office Action was stated as:

One skilled in the art would be motivated to combine the inventions because Homer provides a system which is easy to use in that it eliminates physical delivery of media and/or keys for downloading media, is less expensive to manage in that it does not require particular works to be metered separately, and do no require undesirable compromises between the number of available works and the cost of obtaining access.

However, Homer et al. describes media distribution and access to remotely located encryption files. There is no logical basis for one skilled in the art to desire to use the encrypted files in Homer et al., whose access is limited by authorizations, with the method of Santoro et al. which is concerned with presenting information from a variety of sources in a grid format on a display device. Moreover, the Examiner’s expressed rationale is that Homer et al. provides “*ease of use*” by “*eliminating physical delivery*”, “*less expensive to manage*” and “*does not require undesirably compromises*” but none of which are features or benefits that are needed or desired by Santoro et al. Indeed, paragraphs [0006], [0007] and [0008] of Homer et al. are denoted as “shortcomings of the prior art” and correspond to the Examiner’s expressed rationale. However, these are not

shortcomings of Santoro et al. because Santoro et al. is not concerned with authorization of limited access to encrypted files as is Homer et al.

Applicants submit, notwithstanding the Examiner's assertion to the contrary, that there is no reasonable rationale why anyone skilled in the art would reasonably seek to combine Homer et al. with Santoro et al. "A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of argument reliant upon ex post reasoning." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385, 1397 (2007). However, even if Homer et al. were to be combined with Santoro et al., Homer et al. would not be able to overcome the serious deficiencies of Santoro et al. as discussed above.

4. CONCLUSION

Based on any of the foregoing reasons, it is submitted that claim 1 is patentably distinct from Santoro et al., alone or in combination with Homer et al. Therefore, it is respectfully submitted that the Examiner's rejection of claim 1 is improper and should be withdrawn

Claim 2

Claim 2 depends from claim 1 and further recites:

wherein the priority levels are provided on a per-computer basis or a per-user basis.

Since Santoro et al., alone or in combination with Homer et al., fails to teach or suggest the intra-application priority levels (assigned to different media-based actions supported by the client media player application), it is submitted that claim 2 is likewise patentable distinct from these cited references. Additionally, nothing in either Santoro et al. or Homer et al. teaches or suggests providing intra-application priority levels on a per-computer basis or a per-user basis. Accordingly, it is respectfully submitted that the Examiner's rejection of claim 2 is improper and

should be withdrawn for these reasons as well as reasons similar to those noted above with respect to claim 1.

Claim 3

Claim 3 depends from claim 1 and further recites:

wherein said coordinating coordinates the execution of the activated operations pertaining to a particular user of the computer based on the priority levels.

Since Santoro et al., alone or in combination with Homer et al., fails to teach or suggest coordinating performance of activated operations at the client media player application program in accordance with intra-application priority levels (assigned to different media-based actions supported by the client media player application), it is submitted that claim 3 is likewise patentable distinct from these cited references. Additionally, nothing in either Santoro et al. or Homer et al. teaches or suggests coordinating execution of activated operations pertaining to a particular user of the computer based on the priority levels. Accordingly, it is respectfully submitted that the Examiner's rejection of claim 3 is improper and should be withdrawn for these reasons as well as reasons similar to those noted above with respect to claim 1.

Claim 5

Claim 5 depends from claim 1 and further recites:

wherein the different media-based actions include at least: previewing media, browsing media, purchasing media, and downloading media.

Since Santoro et al., alone or in combination with Homer et al., fails to teach or suggest that the different media-based actions recited in claim 1, these references also fail to teach or suggest that the specific media-based actions

include at least previewing media, browsing media, purchasing media, and downloading media as recited in claim 5. Accordingly, it is respectfully submitted that the Examiner's rejection of claim 5 is improper and should be withdrawn for these reasons as well as reasons similar to those noted above with respect to claim 1.

Claim 6

Claim 6 depends from claim 5 which depends from claim 1 and further recites:

wherein the media includes at least one of audio,
video or images.

Since Santoro et al., alone or in combination with Homer et al., fails to teach or suggest claims 1 and 5, it is respectfully submitted that the Examiner's rejection of claim 6 is improper and should be withdrawn for these reasons as well as reasons similar to those noted above with respect to claims 1 and 5.

Claim 9

Claim 9 depends from claim 1 and further recites:

wherein the media includes at least audio, and
wherein the different media-based actions interact
with the media server and include at least: previewing
music, browsing music, purchasing music, and
downloading music.

Since Santoro et al., alone or in combination with Homer et al., fails to teach or suggest that different media-based actions are prioritized with user-modifiable priorities as recited in claim 1, it is submitted that claim 9 is likewise patentably distinct from these cited references. Additionally, nothing in either Santoro et al. or Homer et al. teaches or suggests that the different media-based actions being prioritized interact with a media server and include at least previewing music,

browsing music, purchasing music, and downloading music. Accordingly, it is respectfully submitted that the Examiner's rejection of claim 9 is improper and should be withdrawn for these reasons as well as reasons similar to those noted above with respect to claim 1.

Claim 11

Claim 11 pertains to a computer readable medium including at least executable computer program code that when executed by a computer performs a method of managing tasks performed within a single client media player application program. More particularly, claim 11 is as follows:

A computer readable medium including at least executable computer program code tangibly stored thereon, that when executed by a computer performs a method of managing tasks performed within a single client media player application program running at the application level on the computer that is coupled over a network to a network-based media server, said method comprising:

receiving, via a task manager computer program implemented within the single client media player application program, tasks to be performed from the single client media player application program, the tasks pertain to one or more different media-based actions, and the tasks involving interaction of the client media player application program with the media server over the network;

activating, via the task manager computer program, an operation at the client media player application program in response to each of the tasks; and

coordinating, via the task manager computer program, performance of the tasks at the client media player application program in accordance with priority levels associated with the different media-based actions of the tasks, each of the different media-based actions having a different intra-application priority level, the priority levels of the different media-based actions being user-

modifiable based on user interaction with the client media player application program.

Hence, the computer readable medium of claim 11 includes program code that when executed performs a method similar to that recited in claim 1. Accordingly, it is respectfully submitted that the Examiner's rejection of claim 11 is improper and should be withdrawn for at least reasons similar to those noted above with respect to claim 1. Moreover, it is submitted that claim 11 is patentably distinct from Santoro et al., alone or in combination with Homer et al.

Claim 12

Claim 12 depends from claim 11 and further recites:

wherein the priority levels are provided on a per-computer basis or a per-user basis.

Since Santoro et al., alone or in combination with Homer et al., fails to teach or suggest the intra-application priority levels (assigned to different media-based actions supported by the client media player application), it is submitted that claim 12 is likewise patentable distinct from these cited references. Additionally, nothing in either Santoro et al. or Homer et al. teaches or suggests providing intra-application priority levels on a per-computer basis or a per-user basis. Accordingly, it is respectfully submitted that the Examiner's rejection of claim 12 is improper and should be withdrawn for these reasons as well as reasons similar to those noted above with respect to claim 11.

Claim 13

Claim 13 depends from claim 11 and further recites:

wherein said coordinating coordinates the performance of the tasks pertaining to a particular user of the computer based on the priority levels.

Since Santoro et al., alone or in combination with Homer et al., fails to teach or suggest coordinating performance of activated operations at the client media player application program in accordance with intra-application priority levels (assigned to different media-based actions supported by the client media player application), it is submitted that claim 13 is likewise patentable distinct from these cited references. Additionally, nothing in either Santoro et al. or Homer et al. teaches or suggests coordinating execution of activated operations pertaining to a particular user of the computer based on the priority levels. Accordingly, it is respectfully submitted that the Examiner's rejection of claim 13 is improper and should be withdrawn for these reasons as well as reasons similar to those noted above with respect to claim 11.

Claim 14

Claim 14 depends from claim 11 and further recites:

wherein the priority levels associated with the
different media-based actions are user-modifiable.

Since Santoro et al., alone or in combination with Homer et al., fails to teach or suggest claim 11, it is respectfully submitted that the Examiner's rejection of claim 14 is improper and should be withdrawn for these reasons as well as reasons similar to those noted above with respect to claim 11.

Claim 15

Claim 15 depends from claim 11 and further recites:

wherein the different media-based actions include at
least: previewing media, browsing media, purchasing
media, and downloading media.

Since Santoro et al., alone or in combination with Homer et al., fails to teach or suggest that the different media-based actions recited in claim 11, these references also fail to teach or suggest that the specific media-based actions

include at least previewing media, browsing media, purchasing media, and downloading media as recited in claim 15. Accordingly, it is respectfully submitted that the Examiner's rejection of claim 15 is improper and should be withdrawn for these reasons as well as reasons similar to those noted above with respect to claim 11.

Claim 16

Claim 16 depends from claim 15 which depends from claim 11 and further recites:

wherein the media includes at least one of audio, video or images.

Since Santoro et al., alone or in combination with Homer et al., fails to teach or suggest claims 11 and 15, it is respectfully submitted that the Examiner's rejection of claim 16 is improper and should be withdrawn for these reasons as well as reasons similar to those noted above with respect to claims 11 and 15.

Claim 19

Claim 19 depends from claim 11 and further recites:

wherein the media includes at least audio, and
wherein the different media-based actions include at least: previewing music, browsing music, purchasing music, and downloading music.

Since Santoro et al., alone or in combination with Homer et al., fails to teach or suggest that different media-based actions are prioritized with user-modifiable priorities as recited in claim 11, it is submitted that claim 19 is likewise patentably distinct from these cited references. Additionally, nothing in either Santoro et al. or Homer et al. teaches or suggests that the different media-based actions being prioritized interact with a media server and include at least previewing music,

browsing music, purchasing music, and downloading music. Accordingly, it is respectfully submitted that the Examiner's rejection of claim 19 is improper and should be withdrawn for these reasons as well as reasons similar to those noted above with respect to claim 11.

Claim 23

Claim 23 pertains to a computer that presents media to a user. More particularly, claim 23 is as follows:

A computer that presents media to a user, said computer comprising:

a single client media application program stored on a computer readable medium and running at the application level on the computer that enables the user to play, browse, preview, purchase, download and present a plurality of media items;

a network interface coupled to the computer that permits said single client media application program to interact with a media commerce server that stores or manages the plurality of media items; and

a task manager computer program implemented within the single client media player application program that coordinates performance of at least browse, preview, purchase and download operations by assigning user-modifiable intra-application priority levels to each of the browse, preview, purchase and download operations, and coordinates performance of the browse, preview, purchase and download operations in accordance with the assigned user-modifiable intra-application priority levels based on user interaction with the client media application program.

1. **NONE OF THE CITED REFERENCES TEACH OR SUGGEST DIFFERENT INTRA-APPLICATION PRIORITY LEVELS FOR DIFFERENT MEDIA-BASED ACTIONS**

Accordingly, claim 23 pertains to a computer for presenting media to its user. The computer includes a single client media application program operable to enable the user to play, browse, preview, purchase, download and present media items for the benefit of the user. A task manager computer program is “implemented within the single client media player application program that coordinates performance of at least browse, preview, purchase and download operations by assigning user-modifiable intra-application priority levels to each of the browse, preview, purchase and download operations, and coordinates performance of the browse, preview, purchase and download operations in accordance with the assigned user-modifiable intra-application priority levels based on user interaction with the client media application program.”

As to such recited different intra-application priority levels, the Examiner relies on portions of Santoro et al. which concern priorities, i.e., refresh priorities, for tiles of a *graphical user interface* organized as a grid. See, e.g., Santoro et al., Fig. 2.

While Santoro et al. supports priorities for tiles in its grid, its priorities are amongst its tiles. For example, Fig. 12 of Santoro et al. illustrates a data structure 1200 of attributes of a grid object 700. The data structure 1200 include a tile list 1216 containing attributes of each tile. Santoro et al., para. [0104]. Additionally, it is stated:

In particular, the address of each tile, its priority and its refresh rate are stored by the grid program. The grid also stores other attributes of tiles such as their respective positions on the grid as given by their column and row number. The priority of a tile may be used to determine its refresh rate in one embodiment of the present invention.”

Santoro et al., para. [0104].

Hence, use of priorities for tiles in a grid as taught by Santoro et al. are to establish refresh rates for the information displayed in a corresponding tile. The grid manages the flow of information to the tiles (Santoro et al. para. [0100]) and the grid manages the refresh rate for each tile in the grid. (Santoro et al. para. [0101]).

In contrast, however, claim 1 pertains to intra-application priority levels for different media-based actions, namely, each of browse, preview, purchase and download operations, of a client media player application program. For example, the priorities for each of browse, preview, purchase and download operations can be used to prioritize execution of actions, whereby one execution thread (e.g., for download) might be suspended for another execution thread (e.g., for purchase) associated with a higher priority action.

Tiles of a grid for display as in Santoro et al. are in no way different media-based actions, such as browse, preview, purchase and download operations, of a client media player application program. In addition, the determination of refresh rates for tiles of a grid [graphical user interface] based on priorities as taught in Santoro et al. cannot teach or suggest providing different intra-application priority levels for each of browse, preview, purchase and download operations of a client media player application program.

Moreover, the rejection in the Office Action improperly equates the URL loader 1510 of Santoro et al. to the client media player application program recited in claim 1. However, the URL loader 1510 cannot correspond to the client media player application program of claim 1. According to para. [0119] of Santoro et al. the “URL loader 1510 decides whether content should be obtained afresh by contacting the connection manager 1512, or from content previously stored in cache.”

The Examiner argues, on page 10 of the final Office Action, that the URL loader 1510 is an application program since “[t]he URL loader is not part of the operating system....” This is not correct. The tiles in Santoro et al. are separate and distinct and not part of a common application program. Each tile is separate and assigned to “a data stream or application program.” (e.g., Santoro et al., para.

[0088]). Further, para. [0089] of Santoro et al. states: “Each tile is separately associated with a series of information, for example, an application program, database or file....” Consequently, in contrast to claim 1, there is no reasonable basis to conclude that the URL loader 1510 is a client media player application program, let alone a client media player application program in which different intra-application priority levels are assigned to different media-based actions supported by such client media player application program. At best, Santoro et al. teaches that each tile of its grid [graphical user interface] is separate and pertains to a distinct data stream or application program. As such, any priorities to tiles would not be intra-application priorities for different media-based actions supported by a client media player application program as recited in claim 23.

As such, it is respectfully submitted that Santoro et al. not only fails to teach or suggest intra-application priorities for different media-based actions, namely, browse, preview, purchase and download operations, but also cannot possibly be combined with any other references to teach the invention recited in claim 23.

Homer et al. pertains to a rechargeable media distribution and play system. Homer et al. was combined with Santoro et al., on page 6 of the Office Action, only for teaching “media-based actions”. However, Homer et al. also fails to teach or suggest intra-application priorities for different media-based actions, namely, browse, preview, purchase and download operations, of a client media player application program. Hence, even if it were appropriate to combine Homer et al. with Santoro et al. as proposed in the final Office Action, the proposed combination of references does not cure the deficiencies of Santoro et al. as noted above.

Accordingly, both Santoro et al. and Homer et al. fail to teach or suggest intra-application priorities for different media-based actions as recited in claim 23.

2. **NONE OF THE CITED REFERENCES TEACH OR SUGGEST
PRIORITY LEVELS FOR DIFFERENT MEDIA-BASED ACTIONS
THAT ARE USER-MODIFIABLE**

As noted above, claim 23 pertains to a computer for presenting media to its user. The computer includes a task manager computer program is implemented within a single client media player application program that coordinates performance of at least browse, preview, purchase and download operations by assigning user-modifiable intra-application priority levels to each of the browse, preview, purchase and download operations. In addition, claim 23 also recites that the task manager “coordinates performance of the browse, preview, purchase and download operations in accordance with the assigned user-modifiable intra-application priority levels based on user interaction with the client media application program.”

On page 6 of the final Office Action, the Examiner made reference to paragraphs [0064], [0089], [0101], [0112], [0166] of Santoro et al. However, these referenced paragraphs are, at best, concerned with refresh or retrieval rates for **tiles** of its displayed grid. As such, these refresh or retrieval rates in Santoro et al. are **not** for browse, preview, purchase and download operations having assigned user-modifiable intra-application priority levels that are assigned based on user interaction with the client media player application program as recited in claim 23.

Hence, it is submitted that Santoro et al. clearly does not teach or suggest user-modifiable intra-application priority levels for each of browse, preview, purchase and download operations which can be assigned based on user interaction with a client media player program. Instead, priorities for tiles in Santoro et al. are primarily set by the grid itself based on type of data or level in grid’s hierarchy. Formally, Santoro et al. expresses this in para. [0090] which states:

The grid assigns a priority to a tile based upon the identifier, or based upon the type of data that the source of the information comprises. Where tiles are ranked into levels, the grid assigns an information source to a tile in a level that is appropriate for

the type of data or the identifier associated with the information source. In this way, a tile can be automatically given a priority that is appropriate for the type of information that it is to display.

Any mention of user preferences or user specified rates (i.e., retrieval rates, refresh rates) in Santoro et al., see for example Santoro et al. para. [0102], is not taught or suggested as being for different media-based actions of a client media player application program. Clearly, Santoro et al. is unable to teach or suggest user-modifiable intra-application priority levels for each of browse, preview, purchase and download operations of a client media player program as recited in claim 23. As such, any priorities to tiles in Santoro et al. would not teach or suggest that intra-application priorities levels for browse, preview, purchase and download operations are user-modifiable as recited in claim 23.

Homer et al. pertains to a rechargeable media distribution and play system. Homer et al. was combined with Santoro et al. on page 6 of the Office Action only for teaching “media-based actions”. However, Homer et al. also fails to teach or suggest user-modifiable intra-application priority levels for each of browse, preview, purchase and download operations of a client media player program as recited in claim 23. Hence, even if it were appropriate to combine Homer et al. with Santoro et al. as proposed in the final Office Action, the proposed combination of references does not cure the deficiencies of Santoro et al. noted above.

Accordingly, both Santoro et al. and Homer et al. fail to teach or suggest user-modifiable priorities of different media-based actions of a client media player program as recited in claim 23.

3. EXAMINER’S RATIONALE TO COMBINE SANTORO ET AL. AND HOMER ET AL. IS DEFECTIVE

Homer et al. pertains to a rechargeable media distribution and play system. Homer et al. was combined with Santoro et al. on page 6 of the Office Action only

for teaching “media-based actions” because the Examiner admits that such is not taught by Santoro et al. Further, the rationale provide to combine these reference in the final Office Action was stated as:

One skilled in the art would be motivated to combine the inventions because Homer provides a system which is easy to use in that it eliminates physical delivery of media and/or keys for downloading media, is less expensive to manage in that it does not require particular works to be metered separately, and do no require undesirable compromises between the number of available works and the cost of obtaining access.

However, Homer et al. describes media distribution and access to remotely located encryption files. There is no logical basis for one skilled in the art to desire to use the encrypted files in Homer et al., whose access is limited by authorizations, with the method of Santoro et al. which is concerned with presenting information from a variety of sources in a grid format on a display device. Moreover, the Examiner’s expressed rationale is that Homer et al. provides “*ease of use*” by “*eliminating physical delivery*”, “*less expensive to manage*” and “*does not require undesirably compromises*” but none of which are features or benefits that are needed or desired by Santoro et al. Indeed, paragraphs [0006], [0007] and [0008] of Homer et al. are denoted as “shortcomings of the prior art” and correspond to the Examiner’s expressed rationale. However, these are not shortcomings of Santoro et al. because Santoro et al. is not concerned with authorization of limited access to encrypted files as is Homer et al.

Applicants submit, notwithstanding the Examiner’s assertion to the contrary, that there is no reasonable rationale why anyone skilled in the art would reasonably seek to combine Homer et al. with Santoro et al. “A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of argument reliant upon ex post reasoning.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385, 1397 (2007). However, even if Homer et al. were to be combined with Santoro et al., Homer et al. would not be able to overcome the serious deficiencies of Santoro et al. as discussed above.

4. CONCLUSION

Based on any of the foregoing reasons, it is submitted that claim 23 is patentably distinct from Santoro et al., alone or in combination with Homer et al. Therefore, it is respectfully submitted that the Examiner's rejection of claim 23 is improper and should be withdrawn

Conclusion

Based on the foregoing, it is respectfully submitted that the Examiner's rejection of claims 1-3, 5, 6, 9, 11-16, 19 and 23 is clearly improper and should be withdrawn. Moreover, it is respectfully submitted that claims 1-3, 5, 6, 9, 11-16, 19 and 23 are patentable over Santoro et al. in combination with Homer et al.

B. CLAIM 24 IS NOT OBVIOUS OVER SANTORO ET AL. IN VIEW OF HOMER ET AL. AND NIEH ET AL.

Claim 24

Claim 24 depends from claim 23 and further recites:

wherein each of the browse, preview, purchase and download operations are executed by different processing threads.

On page 8 of the final Office Action, the Examiner appears to admit that Santoro et al. and Homer et al. fails to teach or suggest that "each of the browse, preview, purchase and download operations are executed by different processing threads" as recited in claim 23. In an effort to reject claim 24, the Examiner further relies on Nieh et al. as teaching separate processing threads. The portion of Nieh et al. relied upon by the Examiner [page 8, para. 14 and page 9, para. 5] concerns

a player that can “play synchronized audio and video streams.” Nieh et al., page 8, para. 14. “Each media stream flows under the direction of an independent thread control.” Nieh et al., page 8, para. 15.

The player in Nieh et al. is for streaming playback. As such the player does not have the capability to support browse, preview, purchase and download operations as does the single client media application program recited in claim 23. As such, Nieh et al. (like Santoro et al. and Homer et al.) cannot teach or suggest that “each of the browse, preview, purchase and download operations are executed by different processing threads” as is recited in claim 24.

Based on any of the foregoing reasons, it is submitted that claim 24 is patentably distinct from Santoro et al., alone or in combination with Homer et al. and Nieh et al. Accordingly, it is respectfully submitted that the Examiner’s rejection of claim 24 is improper and should be withdrawn for these reasons as well as reasons similar to those noted above with respect to claim 23.

Conclusion

Based on the foregoing, it is respectfully submitted that the Examiner’s rejection of claims 1-3, 5, 6, 9, 11-16, 19, 23 and 24 is clearly improper and should be withdrawn. Moreover, it is respectfully submitted that claims 1-3, 5, 6, 9, 11-16, 19, 23 and 24 are patentable over Santoro et al., alone or in combination with one or more of Homer et al. and Nieh et al.

C. CONCLUSION

It is respectfully requested that the Board reverse the rejection of all pending claims under 35 USC §103(a).

In the interest of speedy and just determination of the issues and for the many reasons set forth in this Appeal Brief, it is requested that the Board reverse the Examiner's rejection and should order the Examiner to pass this application to allowance.

If any additional fees are required in connection with the filing of this Appeal Brief, the Commissioner is authorized to charge Deposit Account No. 504298 (Order No. 101-P271).

Respectfully submitted,

/C. Douglass Thomas/

C. Douglass Thomas
Reg. No. 32,947

TI Law Group
2055 Junction Ave., Suite 205
San Jose, CA 95131
408-955-0535

VIII. CLAIMS APPENDIX

1. (Previously Presented) A method of managing tasks performed within a single client media player application program stored on a computer readable medium and running at the application level on a computer coupled over a network to a network-based media server, said method comprising:

receiving, via a task manager computer program implemented within the single client media player application program, tasks to be performed from the single client media player application program, the tasks pertaining to one or more different media-based actions, and the tasks involving interaction of the client media player application program with the media server over the network;

activating, via the task manager computer program, an operation at the client media player application program in response to each of the tasks; and

coordinating, via the task manager computer program, performance of the activated operations at the client media player application program in accordance with priority levels associated with the different media-based actions of the tasks, each of the different media-based actions having a different intra-application priority level, the priority levels of the different media-based actions being user-modifiable based on user interaction with the client media player application program.

2. (Original) A method as recited in claim 1, wherein the priority levels are provided on a per-computer basis or a per-user basis.

3. (Previously Presented) A method as recited in claim 1, wherein said coordinating coordinates the execution of the activated operations pertaining to a particular user of the computer based on the priority levels.

4. (Cancelled).

5. (Original) A method as recited in claim 1, wherein the different media-based actions include at least: previewing media, browsing media, purchasing media, and downloading media.

6. (Original) A method as recited in claim 5, wherein the media includes at least one of audio, video or images.

7. (Cancelled).

8. (Cancelled).

9. (Previously Presented) A method as recited in claim 1,
wherein the media includes at least audio, and
wherein the different media-based actions interact with the media server and include at least: previewing music, browsing music, purchasing music, and downloading music.

10. (Cancelled).

11. (Previously Presented) A computer readable medium including at least executable computer program code tangibly stored thereon, that when executed by a computer performs a method of managing tasks performed within a single client media player application program running at the application level on the computer that is coupled over a network to a network-based media server, said method comprising:

receiving, via a task manager computer program implemented within the single client media player application program, tasks to be performed from the single client media player application program, the tasks pertain to one or more different media-based actions, and the tasks involving interaction of the client media player application program with the media server over the network;

activating, via the task manager computer program, an operation at the client media player application program in response to each of the tasks; and

coordinating, via the task manager computer program, performance of the tasks at the client media player application program in accordance with priority levels associated with the different media-based actions of the tasks, each of the different media-based actions having a different intra-application priority level, the priority levels of the different media-based actions being user-modifiable based on user interaction with the client media player application program.

12. (Original) A computer readable medium as recited in claim 11, wherein the priority levels are provided on a per-computer basis or a per-user basis.

13. (Previously Presented) A computer readable medium as recited in claim 11, wherein said coordinating coordinates the performance of the tasks pertaining to a particular user of the computer based on the priority levels.

14. (Original) A computer readable medium as recited in claim 11, wherein the priority levels associated with the different media-based actions are user-modifiable.

15. (Original) A computer readable medium as recited in claim 11, wherein the different media-based actions include at least: previewing media, browsing media, purchasing media, and downloading media.

16. (Original) A computer readable medium as recited in claim 15, wherein the media includes at least one of audio, video or images.

17. (Cancelled).

18. (Cancelled).

19. (Previously Presented) A computer readable medium as recited in claim 11,
wherein the media includes at least audio, and
wherein the different media-based actions include at least: previewing
music, browsing music, purchasing music, and downloading music.

20. (Cancelled).

21. (Cancelled).

22. (Cancelled).

23. (Previously Presented) A computer that presents media to a user, said
computer comprising:

a single client media application program stored on a computer readable
medium and running at the application level on the computer that enables the
user to play, browse, preview, purchase, download and present a plurality of
media items;

a network interface coupled to the computer that permits said single client media application program to interact with a media commerce server that stores or manages the plurality of media items; and

a task manager computer program implemented within the single client media player application program that coordinates performance of at least browse, preview, purchase and download operations by assigning user-modifiable intra-application priority levels to each of the browse, preview, purchase and download operations, and coordinates performance of the browse, preview, purchase and download operations in accordance with the assigned user-modifiable intra-application priority levels based on user interaction with the client media application program.

24. (Previously Presented) A computer as recited in claim 23, wherein each of the browse, preview, purchase and download operations are executed by different processing threads.

IX. EVIDENCE APPENDIX

There is currently no evidence entered and relied upon in this Appeal.

X. RELATED PROCEEDINGS APPENDIX

There are currently no decisions rendered by a court or the Board in any proceeding identified in the Related Appeals and Interferences section.